



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,639	11/05/2002	Jeffrey L. Rice	3707	5968

27256 7590 06/09/2004

ARTZ & ARTZ, P.C.
28333 TELEGRAPH RD.
SUITE 250
SOUTHFIELD, MI 48034

EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,639

Applicant(s)

RICE ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed March 11, 2004, has been entered. Claims 12-16 have been amended as requested. Claims 18 and 20 are cancelled, while claims 1-11 are withdrawn as non-elected.
2. The cancellation of claims 18 and 20 renders moot the 112, 2nd rejections of said claims set forth in sections 2-5 of the last Office Action.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 12, 14, and 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Us 6,296,733 issued to Hudkins et al. as set forth in section 7 of the last Office Action.

Applicant has amended claims 12, 14, and 15 to include the limitation that the thermoplastic backing material is "rubber-like." Additionally, applicant argues that the cited art of Hudkins does not teach or suggest a rubber-like thermoplastic material since such a material would deleteriously affect extraction from a mold as required by Hudkins (Amendment, page 6, 4th paragraph). However, said amendment and argument are insufficient to overcome the standing rejection.

Specifically, although Hudkins does not explicitly teach the thermoplastic material is rubber-like, it is reasonable to presume said material is inherently rubber-like. Support for this

Art Unit: 1771

presumption is found in the fact that the Hudkins invention is drawn to an auto floor mat, which are well known in the art to be inherently flexible in order to conform to the contours of the auto floor and/or for ease of installation and removal. Thus, it is asserted that the thermoplastic material of Hudkins is inherently rubber-like. The burden is shifted to applicant to prove otherwise.

Furthermore, applicant's argument that a rubber-like material would not work in the Hudkins' invention is unsupported. In particular, applicant has not provided sufficient reasoning and/or evidence of this argument. Thus, claims 12, 14, and 15 stand rejected under 102.

Claim Rejections - 35 USC § 103

5. Claims 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Hudkins patent.

In the alternative, it would have been obvious to one skilled in the art to select a thermoplastic material that is rubber-like for the invention of Hudkins in order to produce a suitably flexible auto floor mat. Therefore, claims 12, 14, and 15 are rejected as being obvious over the cited Hudkins patent.

6. Claims 13, 16, 17, and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Hudkins reference as set forth in section 9 of the last Office Action.

Since applicant did not traverse the Official Notice given for the process steps of claims 13, 16, and 17, the record is established that the following process steps are well known in the art: (a) introducing a raw material for an extruded thermoplastic layer into a mixer, heating said thermoplastic material until it flows, and extruding said heated material and (b) use of a loss in

Art Unit: 1771

weight feeder, and (c) extruding a thermoplastic material into pellets and then heating and extruding the palletized material.

Applicant has amended claims 13 and 16 to include the limitation of introducing a raw material selected from the group consisting of a plasticizer, an additive, a thermoplastic additive, and a filler, into the mixing device after the introduction of the recyclable, rubber-like thermoplastic material. Although Hudkins does not explicitly teach such auxiliaries, it is argued that the use of said additives, fillers, or plasticizers to thermoplastic materials before extrusion is well known in the art. Applicant is hereby given Official Notice of this fact. Thus, it would have been obvious to one skilled in the art to employ any number of auxiliaries, such as a filler for reducing the weight and/or volume of thermoplastic material employed, another thermoplastic polymer in order to modify the properties of the extruded material, a UV stabilizer for protecting the extruded material from sunlight damage, a pigment for producing an aesthetic color, an extrusion aid for facilitating the extrusion process, an impact modifier for improving the impact resistance of the extruded material, etc. Therefore, claims 13, 16, 17, and 19 are rejected as being obvious over the cited art.

Response to Arguments

7. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

8. As noted above, applicant's assertion that a rubber-like thermoplastic material would not be suited for the Hudkins invention is unsupported by rational or evidence.

Art Unit: 1771

9. Applicant also traverses on the ground that the Hudkins invention has a plurality of projections while the present invention does not (Amendment, page 7, 1st paragraph). In response, it is noted that the open language of the present claims do not exclude formation of said projections.

10. With respect to the ethylene-octene copolymer limitations of claims 14 and 15, it is reiterated that the composition of the thermoplastic material does not manipulatively effect the claimed process steps. As such, said limitations are not given patentable weight at this time.

11. Additionally, applicant traverses on the grounds that Hudkins does not teach forming pellets of thermoplastic material, subsequently heating said pellets, and extruding the thermoplastic material again to form the backing material (Amendment, page 7, 1st paragraph). In response, it is agreed that these process steps are not taught by Hudkins. However, the rejection is not based upon Hudkins alone, but rather based upon Hudkins in view of what is commonly known in the art (i.e., Official Notice). Thus, applicant's argument is found unpersuasive.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 1771

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
June 7, 2004